

1 SCOTT M. MAHONEY (Nev. Bar No. 1099)  
FISHER & PHILLIPS LLP  
2 300 S. Fourth Street, Suite 1500  
Las Vegas, NV 89101  
3 Telephone: (702) 252-3131  
smahoney@fisherphillips.com

4 DONALD R. LIVINGSTON (DC Bar No. 436063)  
5 ESTHER G. LANDER (DC Bar No. 461316)  
Admitted pro hac vice  
6 AKIN GUMP STRAUSS HAUER & FELD LLP  
1333 New Hampshire Avenue, N.W.  
7 Washington, D.C. 20036-1564  
Telephone: (202) 887-4000  
8 Facsimile: (202) 887-4288  
dlivingston@akingump.com  
9 elander@akingump.com

10 Attorneys for Defendant  
DESERT PALACE, INC., d/b/a CAESARS PALACE

11  
12 UNITED STATES DISTRICT COURT  
13 DISTRICT OF NEVADA  
14

15 WILLIAM J. BERRY, JR.;  
CYNTHIA FALLS; and SHANE  
16 KAUFMAN,

17 Plaintiffs,

18 v.

19 DESERT PALACE, INC., d/b/a  
CAESARS PALACE; DOES I  
20 through X, and ROE BUSINESS  
ENTITIES I through X, inclusive,

21 Defendants.  
22

Case No. 2:17-cv-00019-GMN-PAL

[PROPOSED] PROTECTIVE ORDER  
REGARDING CONFIDENTIAL  
DISCOVERY MATERIALS

23  
24 The Court recognizes that Defendant Desert Palace, Inc., d/b/a Caesars Palace  
25 (“Defendant”) and Plaintiffs William J. Berry, Jr., Cynthia Falls, and Shane Kaufmann  
26 (“Plaintiffs”) (collectively the “parties”) and others may be called upon to disclose  
27 confidential business or private information in the course of this litigation, *Berry, et*  
28 *al. v. Desert Palace, Inc., d/b/a Caesars Palace, et al.*, No 2:17-cv-00019-GMN-PAL

1 (D. Nev.). Pursuant to Federal Rule of Civil Procedure 26(c), this stipulation serves to  
2 protect the legitimate privacy interests, to maintain the confidentiality of information  
3 entitled to protection that may be produced in discovery in this litigation, and to  
4 provide for an orderly means for the parties and others to invoke confidentiality for  
5 materials deserving such protection and the subsequent use of those materials in  
6 accord with prevailing Ninth Circuit and U.S. District Court for the District of Nevada  
7 standards, it is ordered as follows:

8 I. DESIGNATION AS "CONFIDENTIAL"

9 In discovery, for good cause, any document (and the contents thereof), thing,  
10 testimony, response to written discovery, or information falling within the definitions  
11 set forth below, may be designated and marked, in whole or in part, as "Confidential"  
12 by the party producing the documents or information at the time the documents are  
13 provided, produced, or made available for inspection by the other party. "Confidential  
14 Information" shall be treated so throughout this litigation. The procedure for  
15 designating materials as Confidential is as follows:

- 16 1. "Confidential Information" may be designated or marked, in whole or in  
17 part, as Confidential. "Confidential Information" is defined as facts,  
18 data, or material which is highly personal and private to a particular  
19 individual or entity, such employee personnel files, plaintiffs' medical  
20 counseling or treatment records, and Defendant's proprietary business  
21 information, including but not limited documents with personal or  
22 financial information related to Defendant's customers. "Confidential  
23 Information" also includes information that has been entrusted to a party  
24 by persons not parties to this litigation upon a promise or legitimate  
25 expectation of privacy that the information would be treated  
26 confidentially and respectfully and not generally disclosed to others who  
27 have no legitimate need of same. While such private and personal  
28 information may be discoverable in this litigation, it should not be

disclosed in the public part of this case unless further proceedings are undertaken.

2. The parties shall have thirty (30) days from the entry of this Stipulation and Order to designate as Confidential those documents that already have been produced (by them or another party) or received prior to the date of such entry.
3. A party, person, or entity may designate materials as Confidential only if they do so in good faith and reasonably believe that there is a legally sound reason for the designation.
4. In accord with Ninth Circuit precedent, the parties agree to use the least obstructing means of designating Confidential Information.
5. During this litigation, either party may designate as Confidential any material produced in discovery by any other party or any non-party if the designating party in good faith believes that the material contains Confidential Information. The designating party shall have 30 days from the date the material has been produced, or from the date of entry of this Order, to inform the non-designating party in writing that the produced material is being designated as Confidential.

## II. DESIGNATION OF DEPOSITION TESTIMONY AS CONFIDENTIAL

### a. Testimony of Party Deponent

When appropriate and subject to certain restrictions set forth in section I *supra*, any party (or their counsel) may designate a party's (their own or another party's) deposition testimony (or any portion thereof, including exhibits) as Confidential by advising the reporter and all parties on the record during the deposition or, thereafter, by notifying the opposing party and court reporter in writing within thirty (30) days after the actual receipt of a copy of a transcript.

1           b.     Testimony of Non-Party Deponent

2           If a party (or their counsel) wishes to designate the deposition testimony of any  
3 of its current and/or former employees' or any other non-party deponent (or any  
4 portion thereof, including exhibits), they may do so by advising the reporter and all  
5 parties on the record during the deposition or, thereafter, by notifying the opposing  
6 party and court reporter in writing within thirty (30) days after the actual receipt of a  
7 copy of the transcript.

8           A non-party deponent may, within the same restrictions and propriety,  
9 designate their testimony as "Confidential" either at the deposition or in writing to the  
10 opposing party and reporter within twenty (20) business days of notification by the  
11 court reporter that the transcript is ready for review. A non-party deponent retains the  
12 right, in accordance with the Federal Rules of Civil Procedure, to seek a protective  
13 order during the deposition to preclude or limit disclosures.

14   III.   DESIGNATION OF DOCUMENTS AND MATERIALS AS  
15           CONFIDENTIAL

16           Subject to the restrictions provided in section I *supra*, documents, portions of  
17 documents, answers to interrogatories, responses to requests for admission and other  
18 materials may be designated as Confidential by stamping or otherwise marking the  
19 appropriate page of the material as Confidential. The recipient of any material marked  
20 "Confidential" pursuant to this Stipulated Protective Order shall exercise due and  
21 proper care with respect to the storage, custody, and use of Confidential Information.

22   IV.   SUBSEQUENT DESIGNATIONS AS CONFIDENTIAL

23           Any material inadvertently produced without being designated as Confidential  
24 as provided in section I *supra* may be so designated at a later date by the producing  
25 party or person by sending a letter invoking such designation to each party who had  
26 received such material and by reproducing the material with a Confidential stamp on  
27 each page. The restrictions provided in section I for designating anything as  
28 Confidential shall apply.

1 V. RESTRICTIONS ON DISCLOSURE

2 Any Confidential Information shall not be disclosed to or discussed with any  
3 person, except the following:

- 4 i. Unless otherwise restricted below, the individual party Plaintiffs and  
5 Defendant;
- 6 ii. Counsel to the parties and their staff;
- 7 iii. Expert witnesses and consultants retained to give testimony with regard  
8 to the subject matter of the Confidential Information (or a portion  
9 thereof), in which case, the disclosure shall be limited to that portion of  
10 Confidential Information which is related to the consulting or testimony,  
11 only after having them sign a copy of the acknowledgement in this  
12 protective order (see section VI *infra*);
- 13 iv. The Court, its staff, and the jury;
- 14 v. Unless otherwise restricted below, a non-party during the non-party's  
15 preparation for testifying at a deposition, hearing, or trial in this  
16 litigation, to the extent the Confidential Information shown to the non-  
17 party, or the content of said Confidential Information, is reasonably likely  
18 to be a part of the non-party's testimony on direct or cross-examination,  
19 and only after having the non-party sign a copy of the acknowledgement  
20 in this protective order (see section VI *infra*);
- 21 vi. Other persons only upon consent of the party designating information as  
22 Confidential and only after having those persons first sign a copy of the  
23 acknowledgement in this protective order (see section VI *infra*) or upon  
24 order of the Court.

25 VI. SIGNATURE AND AGREEMENT TO COMPLY WITH THIS  
26 STIPULATION AND ORDER

27 The persons not directly employed by counsel of record for the parties, but to  
28

1 whom disclosure is necessary for purposes of this litigation (e.g., third-party witnesses  
2 or experts), shall be provided with this Stipulation and Order and be required to sign  
3 the attached acknowledgement (Exhibit A) stating that he/she understands the terms  
4 and agrees to comply with, and be bound by, this Stipulation and Order until modified  
5 by either further orders of the Court or agreement of all the parties.

6 **VII. USE OF CONFIDENTIAL INFORMATION IN COURT FILINGS**

7 The parties acknowledge that this protective order does not confer blanket  
8 protection and does not necessarily entitle them to file confidential information under  
9 seal (or require opposing party to do so) without complying with the standards  
10 articulated in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.  
11 2006), and subsequent case law, and also in accord with Local Rule IA 10-5.

- 12 i. While only good cause for protection is required for confidentiality in  
13 discovery and thus might justify sealing in discovery and discovery  
14 pleadings, a higher standard, compelling reason, is required for sealing of  
15 evidence in relation to dispositive matters.
- 16 ii. The parties may agree that the filing party may file documents designated  
17 confidential by the other party not under seal. If no such agreement is  
18 made before filing, then any documents to be filed with the court  
19 containing confidential material will be accompanied by a motion to seal.  
20 A motion to file a document under seal will be served on opposing  
21 counsel, and on the person or entity that has custody and control of the  
22 document, if it is different from opposing counsel.
- 23 iii. If the designating party seeks to secure continuing protection (i.e., is in  
24 favor of sealing), then the burden remains on that designating party to  
25 meet the particular standard in the context of the filing (good cause for  
26 discovery; compelling reason for dispositive matter use).
- 27 iv. For motions that refer to confidential material in an identifiable way, the  
28 parties will publicly file a redacted version of the filing.

1 VIII. DISPUTING AND CHALLENGING DESIGNATIONS

2 A party to this action may, at any time, challenge the designation of  
3 Confidential. The challenger must first give the designator notice and ten (10)  
4 calendar days to withdraw the designation. If a resolution does not occur after the  
5 parties have met and conferred as required by the Federal Rules of Civil Procedure,  
6 either party may file a motion with the Court to resolve the dispute. Such motion  
7 must be filed within thirty (30) calendar days of receipt of the written objection to the  
8 designation. The disputed document(s) or testimony shall be submitted to the Court  
9 under seal and continue to be regarded as Confidential unless and until the Court  
10 determines to the contrary.

11 IX. NO WITHHOLDING

12 A party to this litigation may not withhold production of any document of any  
13 information solely on the basis that it is Confidential. A party may, under appropriate  
14 circumstances, seek greater protection than the protection afforded by this Protective  
15 Order for documents or information deserving of same, but must do so by securing a  
16 stipulation or by filing a motion for a protective order on or before the due date for  
17 production.

18 X. TREATMENT OF CONFIDENTIAL INFORMATION IN GENERAL

19 Any documents, testimony, and/or information that has been designated  
20 Confidential under this Order is to be used only in the above-captioned action, and  
21 may not be used in any other action or for any other purpose unless the party seeking  
22 to make such use acquired the documents, testimony, and/or information from a  
23 source independent of the above-captioned action.

24 XI. TREATMENT OF CONFIDENTIAL INFORMATION AFTER LITIGATION  
25 CONCLUDED

26 At the conclusion of the case (either by settlement or “final” order), the parties,  
27 their counsel, and any other person having received Confidential Information shall

28 ///

1 return the same to counsel for the party providing the Confidential Information.  
2  
3

**It is so ordered.**

Dated: October 26, 2017

A handwritten signature in blue ink, appearing to read "J. A. Feen", is written over a horizontal line.

Honorable  
United States Magistrate Judge



# Exhibit A

## ACKNOWLEDGEMENT

I HEREBY ACKNOWLEDGE THAT I HAVE READ THE FOREGOING PROTECTIVE ORDER FOR CONFIDENTIALITY OF MATERIALS ENTERED BY THIS COURT IN THIS LAWSUIT. I HEREBY ACKNOWLEDGE THAT I UNDERSTAND THE ORDER AND AGREE TO MAKE MY BEST EFFORTS TO COMPLY WITH IT AND MAINTAIN THE CONFIDENTIALITY OF CONFIDENTIAL INFORMATION PROVIDED TO ME.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(PRINT NAME)

ADDRESS: \_\_\_\_\_